REMARKS/ARGUMENTS

The Office Action mailed December 19, 2005 has been carefully considered.

Reconsideration in view of the following remarks is respectfully requested.

Status of the Claims

Claims 1-4, 9-24, 26, 30-32, 52, and 63-85, 87-91 are now pending. No claims

stand allowed.

All of the pending claims remain unchanged, but the listing of the claims is

presented for the Examiner's convenience.

The 35 U.S.C. §103 Rejection

Claims 1-4, 9-24, 26, 30-32, 52, 63-85 and 87-91 stand rejected under 35 U.S.C.

§103(a) as being allegedly unpatentable over Brendel et al. (U.S. Pat. No. 5,774,660) in

view of Lamarque et al. (U.S. Pat. No. 6,690,651), among which claims 1, 9, 13, 17, 20,

30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 are independent claims. This rejection is

respectfully traversed.

According to M.P.E.P. §2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met.
First there must be some suggestion or motivation, either in the references
themselves or in the knowledge generally available to one of ordinary skill in the
art, to modify the reference or to combine reference teachings. Second, there
must be a reasonable expectation of success. Finally, the prior art reference (or
references when combined) must teach or suggest all the claim limitations. The
teaching or suggestion to make the claimed combination and the reasonable

expectation of success must both be found in the prior art, not in the applicant's disclosure.

Furthermore, the mere fact that references <u>can</u> be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Claim 1 defines a backup server for enabling a data communications network to recover from a local server failure, the data communications network including a network access server (NAS) for coupling a call placed from a call-in user to the data communications network, the NAS having a memory associated therewith. The claimed backup server comprises (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information of the ongoing call for maintaining connection of the ongoing call if the local server fails, and (b) a parser for reconstructing the call information from the information packet such that the backup server maintains the ongoing call to the data communications network, as recited in claim 1.

In the Final Office Action, the Examiner maintains the previous rejections, contending that the elements of the presently claimed invention are disclosed in Brendel except that Brendel does not teach a user's placing a request by calling in. The Examiner specifically equates Brendel's backup load balancer **70'** illustrated in FIG. 19 (also in

column 9, lines 9-10) thereof with the claimed network access server (NAS). That is, according to the Examiner's allegation, Brendel's load balancer **70** (in FIGS 8 and 19 thereof), individual servers **56, 51,** and **52** (FIGS. 8 and 19 thereof), backup load balancer **70'** (in FIG. 19 thereof), and client browser **10** (FIGS. 8 and 19 thereof) correspond to the claimed backup server, the claimed local server, the claimed NAS, and the claimed user (but not "calling-in"), respectively.

The Examiner further contends that Lamarque teaches a user placing a request by calling in, and that it would have been obvious to utilize Lamarque's teachings in Brendel's system "to request data information through a network because it would have enabled user to bypass long distance carriers and their permanent usage and to run voice traffic over the Internet" (Final Office Action, page 4), citing column 1, lines 25-29 of Lamarque. The Examiner specifically equates a terminal such as IP terminal **122** of Lamarque as a call-in user. The Applicants respectfully disagree for the reasons set forth below.

First, it should be noted that Lamarque describes advantage of <u>Internet telephony,</u> or voice over IP (VoIP), not a data request or transmission over the Internet as described in Brendel. In the conventional telephone (voice) calls, a long distance call must be directly connected from a caller via long distance carrier(s) to a receiver. However, if VoIP is used, a caller (user) may make a local call, if the user is a remote or dial-up user, to a local Internet access point, or directly use the Internet access from a LAN, to send the voice message over the Internet, such that a long distance carrier (traditional public

switch network: PSTN **102**) is bypassed, as shown in FIG. 1 of Lamarque. Thus,

Lamarque's teaching is sending voice messages over the Internet, without making a long

distance call to the receiver. Further details are discussed below.

In Brendel, when the client browser **10** decides to send a request using a dial-up

connection, for example, the client **10** would place a local call to a nearby network access

point to connect to an Internet service provider (ISP). Then, the user's request is

communicated to the destination (the web site **144**) over the Internet **66** through internet

connections **142**, **148**, using data packets. The Internet connection (traffic) using data

packets is typically free, except predefined Internet access fees. Thus, in Brendel, the

client **10** would only be charged for a local call to send a request over the Internet (this is

the same for Lamarque's VoIP).

On the other hand, if Brendel should be modified as the Examiner alleges, the

client **10** must become a call-in user placing a call via the backup load balancer **70'** (the

alleged NAS) to the communication network. Thus, the modified client **10** need to place

a call to the backup load balancer **70'**, i.e., make a long distance call to the web site **144**,

which may be located anywhere in the world. Thus, the alleged modification would cost

the client **10** charges for a long distance call to the backup load balancer **70'** in order to

send a request to the web site **144**. Since Lamarque's teaching is <u>not</u> making a long

distance call, but running voice traffic using Internet for a flat monthly Internet access fee

(column 1, lines 28-29 thereof), Lamarque teaches away from modifying the client **10**

into a call-in user making a call to the backup load balancer **70'**.

Furthermore, contrary to the Examiner's allegation, Brendel's backup load

balancer **70'** does not disclose or teach the claimed NAS for the reasons set forth below.

The claimed NAS couples a call placed from a call-in user to the data

communications network, as recited in claim 1. On the other hand, Brendel described the

backup load balancer **70'** as follows:

> FIG. 19 is a diagram of a fault-tolerant web site with a back-up
> load balancer and dual Internet connections. Browser **10** sends requests
> through Internet **66** with a virtual IP address for the whole web site.
> Incoming packets with the virtual IP address are routed to load balancer
> **70** over local LAN **144**. Local LAN **144** may contain routers, switches,
> and hubs when servers are located on separate network nodes. Local
> LAN **144** connects to Internet **66** through Internet connection **142** which
> directly connects to Internet connection router **140**, and through Internet
> connection **148**, which is connected to Internet connection router **146**.
> (Column 18, lines 44-54)

> A backup load balancer **70'** is also provided to take over operation
> should primary load balancer **70** fail. These load balancers are located
> on separate servers to lessen the chance that both fail at the same time.
> Backup load balancer **70'** closely monitors primary load balancer **70** to
> detect a failure. (Column 19, lines 9-14)

Thus, any server on the LAN **144**, including the backup load balancer **70'** (or the

hosting server **55**) in Brendel's system (web site) receives user requests through the

Internet **66** (the alleged communication network) via a connection router **140** or **146**.

That is, the servers in the web site are a destination to which the user (client browser **10**)

sends a request from the other side of the Internet **66**, as shown in FIG. 19 of Brendel.

Accordingly, the backup load balancer **70'** (the alleged NAS) <u>receives</u> a user's request

<u>from the communications network</u> via a router, and thus the backup load balancer **70'**

cannot couple a request (the alleged call) from a user to the communications network, as recited in claim 1. In addition, the only functions of the backup load balancer **70'** described in Brendel are to monitor the primary load balancer **70** and take over the operation should primary load balancer **70** fail.

Furthermore, as discussed below, there are additional reasons why Lamarque does not teach or suggest modifying Brendel's system such that a user places a request by calling in to the backup load balancer **70'**, the alleged NAS, as the Examiner alleges.

Brendel's servers within in the LAN **144** are accessed using IP addresses and structured to communicate using data packets (column 6, lines 8-52 thereof) through connection routers. Thus, these servers, including the server **55** hosting the backup load balancer **70'**, are not capable of receiving a call placed from a call-in user (i.e., a direct dial-up call from a user), unless the structure and function thereof are substantially changed. In order for the server **55** (or the backup load balancer **70'** thereon) to receive a user's dial-up call placed on to a telephone line, the server **55** must be modified to have a direct connection to a telephone line, bypassing the connection routers **140, 146** and the Internet **66**, to be accessed via telephone numbers, not IP addresses. Such a modification would require substantial changes in the principle of operation (from using data packets to using telephone signals) of the server **55** and the entire network structure of the web site (LAN **144**) of the Brendel's system. The server **55** would need modems coupling to telephone lines. However, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then

the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti,* 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In *Ratti* case, the court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." *Id.,* at 352.

Accordingly, even if Lamarque may allegedly teach a user placing a request by calling in, it would <u>not</u> have been obvious to modify Brendel's system such that a call-in user places a call via the backup load balancer **70'** (the alleged NAS) to a data communications network.

With respect to the reaming allegations of the Examiner, which are identical to those in the previous Office Action, the Applicants incorporate by reference the arguments presented in the previous response.

Consequently, Brendel, whether considered alone or combined with teaching of Lamarque, does not teach or suggest the claimed backup server as recited in claim 1.

Other independent claims 9, 13, 17, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 includes, among others, substantially the same distinctive features regarding the NAS and the information packet, as discussed above. Accordingly, it is respectfully requested that the rejection of claims based on Brendel and Lamarque be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Dependent Claims

Claims 2-4 and 85 depend from claim 1, claims 10-12 and 87 depend from claim 9, claims 14-16 and 88 depend from claim 13, claims 18-19, 52 and 89 depend from claim 17, claims 21-24, 26 and 90 depend from claim 20, claims 31-32 and 91 depend from claim 30, claims 64-65 depend from claim 63, claim 67 depends from claim 66, claim 70 depends from claim 69, claims 72-73 depend from claim 71, claim 75 depends from claim 74, claim 77 depends from claim 76, claims 79-80 depend from claim 78, claim 82 depends from claim 81, and claim 84 depends from claim 84, and thus include the limitations of respective independent claims. The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable at least for the same reasons.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Response places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.
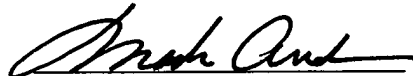
If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-1698.

Respectfully submitted,
THELEN REID & PRIEST, LLP

Dated: February 21, 2006

Masako Ando
Reg. No. Ltd. Rec. No. L0016

Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Tel. (408) 292-5800
Fax. (408) 287-8040

SV #237814 v1